

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26<sup>TH</sup> DAY OF MAY, 2004

PRESENT

THE HON'BLE MR. JUSTICE B. PADMARAJ

AND

THE HON'BLE MR. JUSTICE AJIT J. GUNJAL

CRIMINAL APPEAL NO. 1082 OF 2000

Between:

1. Abdul Ajeem @ Bolt  
Ajeem @ Ajeem  
Aged about 26 years;  
Bheri by Community,  
Autorickshaw Driver  
R/o Achangi village,  
Sakaleshpur Taluk.
2. Ibrahim @ Ibbu  
S/o Pudiyaabba,  
Aged 29 years;  
Bheri by Community,  
Timber Merchant,  
R/o Achangi village,  
Sakaleshpur Tq;
3. Mahesha S/o late Basavegowda,  
Aged about 30 years;  
Vokkaligaru by Caste,  
Student studying  
in II year D.M.L.T.C.,  
R/o Achangi village,  
Sakaleshpur Taluk.

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Accused.

( By Sri S. Shankarappa, Adv. )

And:

State by Sakaleshpur  
Town Police,  
Sakaleshpur.

Respondent.

( By Sri B.C. Muddappa, Addl. S.P.P., )

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction dated 20-5-2000 passed by the Addl. Sessions Judge Hassan in SC 128/98, convicting the accused under section 302 R/w 34 IPC and sentencing them to undergo R.I. for life.

This appeal coming on for hearing this day, Padmaraj J., delivered the following:

### JUDGMENT

This criminal appeal by the appellants, who were accused Nos. 1 to 3 before the trial court, is directed against the judgment and order of the trial court dated 20.5.2000, whereby they were convicted by the trial court for the offence punishable under section 302 R/w Section 34 of I.P.C. and sentenced to undergo rigorous imprisonment for life.

2. The appellants herein were tried before the trial court on a charge under section 302 R/w Section 34 of I.P.C. based on the allegation that on 15.5.1998 at about 1-20 P.M. in the after-noon, on the road in front of the house of one



Smt. Yashodamma PW.4 in Achangi village, in furtherance of their common intention, the appellants committed the murder of one Adam son of Ismail, aged about 50 years, resident of Achangi village, due to previous enmity by waylaying the deceased while he was proceeding along the road in front of the house of the above said Yashodamma PW.4 and among the accused persons, accused No.1 Abdul Ajeem @ Bolt Ajeem committed assault with chopper on the head and face and accused No.2 Ibrahim and accused No.3 Mahesh committed assaulted with choppers on the hands and other parts of the body of the deceased and thereby caused his death.

3. The accused persons A1 to A3 are also residents of Achangi village in Sakleshpur Taluk and they are aged about 24 years, 25 years and 20 years respectively.

4. The incident in question took place at about 1-20 P.M. in the after-noon on 15.5.1998 on the public road situated in front of the house of one Smt. Yashodamma PW.4 at Achangi village in Sakleshpur Taluk and the First Information Report in respect of this incident was lodged by the complainant Abubekar PW.1, who is the son of the deceased, on the same day at about 2-20 P.M. in Sakleshpur Town Police Station,



situated at a distance of about 3 kms. from the scene of incident. The deceased Adam was immediately shifted to Crawford Hospital in Sakleshpur town for treatment soon after the incident, but by the time he could reach the hospital he had expired and the doctor who examined him at the said hospital pronounced him to be dead and thereafter the complainant PW. 1 went and lodged his first information report of the incident as per Ex.P.1 at Sakleshpur Town Police Station. The proforma FIR along with the original complaint was delivered to the Jurisdictional Magistrate at about 4-45 P.M. in the evening on the same day.

5. Abubekar PW.1 is the son of the deceased and PW.2 Smt. Asiyamma is the wife of the deceased. All the material witnesses for the prosecution, the deceased and the accused are residents of the same village and they were known to each other. That is to say they had acquaintance with each other. The deceased Adam was doing timber business and so also accused Nos. 1 to 3. On that relevant Friday, on 15.5.1998 at about 12-45 P.M. in the after-noon the complainant PW.1 left his house for mosque to offer Friday prayers in the mosque. At about 1-30 P.M. when the complainant PW.1 was in the mosque, his mother Smt. Asiyamma PW.2 came crying and bawling near the mosque



and informed to him that his father, the deceased Adam, is being assaulted by the accused persons A1 to A3 near the house of one Yashodamma PW.4 and that when she and others tried to intervene, they were threatened by the accused persons. On being so informed by his mother PW.2, the complainant PW.1 along with a few others immediately proceeded to the spot and on reaching there, he found that his father deceased Adam was lying with injuries near the house of the said Yashodamma PW.4. The deceased Adam had sustained certain serious injuries on his person including the head, face, hands, legs etc. When the complainant PW.1 saw his father lying with injuries at the spot, he was still alive and was in a position to speak. He was told by the deceased that he had been assaulted by the accused persons A1 to A3. It is said that the accused persons could leave the deceased only after they felt confirmed that the deceased has died. Thereafter, the complainant PW.1 along with few others took his injured father to the Crawford Hospital in Sakleshpur. PW.16 Dr. G.M. Varnadav, who was then working as a physician at the Crawford Hospital in Sakleshpur Town and that on 15.5.1998 at about 2 P.M. he found that the dead body of the deceased Adam was received in their hospital by Smt.

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Dr. Shyamaladevi who was then the Casualty Medical Officer and after receiving the dead body of the deceased, the said Dr. Smt. Shyamaladevi had sent intimation to the concerned police as per Ex.P.15. PW.14 Devegowda was then working as the P.S.I. at Sakleshpur Town Police Station and that on 15.5.1998 at about 2-15 P.M. when he was present in the Police Station, he received a memo regarding the murder of one Adam from the Govt. Hospital Sakleshpur, as per Ex.P.15. Then at about 2-20 P.M. itself on the same day, i.e. on 15.5.1998, the complainant PW.1 appeared before him at the police station and presented a written complaint as per Ex.P.1. On the basis of which, he registered the case and forwarded the FIR to the Court and proceeded to the Govt. hospital at Sakaleshpur along with his staff. At the hospital, he held the inquest proceedings on the dead body of the deceased in the presence of panchas P.W.9 and others as per the inquest report Ex.P.18. After the inquest proceedings were held, he made arrangements for subjecting the dead body of the deceased to the post mortem examination. PW.16 Dr. G.M. Vamadev conducted the post mortem examination on the dead body of the deceased between 4-45 and 5-45 p.m. on 15.5.1998 and found as many as 15 external ante-mortem injuries



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of 25 paise as per MO 16. After recording the spot panchanama, he examined and recorded the statements of the eye witnesses PW.2 Smt. Aasiyamma and CW.3 Mariyamma. Then he returned to the police station and deputed his staff to search and apprehend the absconding accused persons. After the post mortem examination was over, the clothes that were found on the dead body of the deceased as per M.Os 7 to 10 were produced before him and he seized the same under a seizure mahazar Ex.P.10. Subsequently on 16.5.1998 he visited Achangi village and there he examined and recorded the statements of the other eye witnesses PW.3 Fathima, PW.4 Yashodamma and PW.5 Ameenabi and others. He made sincere efforts to search and apprehend the accused persons along with his staff in the surrounding areas, but they could not be traced as they were absconding. On 17.5.1998 also he made similar efforts, but the accused could not be traced. Thereafter, the further investigation of this case was taken up by the CPI. PW.15 Nagappa was then the CPI of Sakleshpur Circle and that on 18.5.1998 he took up further investigation of this case from the PSI PW.14. On the same day i.e., on 18.5.1998, on the basis of certain credible information, he along with PW.14 and their staff went near Ossor estate and having found the



presence of all the three accused persons near the said estate, the accused were apprehended and were brought to the police station, where the necessary arrest formalities were completed. On being interrogated by the Investigating Officer PW.15, accused No.1 made a disclosure statement to produce the chopper, which he had concealed in a bush in the grave yard of his village, as per Ex.P.16. Likewise, the other two accused persons A2 and A3, on being interrogated by the Investigating Officer PW.15, made the disclosure statements as per Exs.P.17 and P18 to produce the choppers from the places where they were respectively concealed by them. Thereafter the investigating officer PW.15 went along with the other accused persons and his staff to Achangi village, where, from near the hotel of one Raju, he secured the presence of two panchas PW.8 and PW.11. Thereafter the accused persons led them to the graveyard in Achangi village. After the jeep was stopped, accused No.1 led them to a spot near a tomb in the grave yard and from inside the bush he took out the chopper M.O. 11 and produced the same before the investigating officer PW.15 and the panchas. The same was seized under panchnama Ex.P.5. Thereafter, accused No.2 led them to a place near the place from where accused No.1 had produced the chopper and from inside the



bush, accused No.2 produced a chopper MO.12 and the same was seized under a panchanama Ex.P.6. Then lastly accused No.3 led them to a certain place in the grave yard and from inside the bush produced the chopper MO. 13 and the same was seized under a panchanama Ex.P.7. Thereafter the investigating officer PW.15 returned to the police station along with the accused and the material objects that were recovered at the instance of these accused persons. At the police station in the presence of the panchas, the investigating officer PW.15 seized the shirt MO 1 and the pant MO 2 from the person of accused No.1. Likewise he seized the shirt MO 3 and the pant MO 4 from the person of accused No.2 and T-shirt MO 5 and the pant MO 6 from the person of accused No.3. He seized M.Os 1 to 6 under a panchanama Ex.P.9. Subsequently on 24.6.1998 he sent the seized articles of this case for their chemical examination to the FSL at Bangalore. Thereafter on 27.7.1998 since he was transferred, he handed over the further investigation of this case to one Krishnamurthy CW.13. It appears that his successor Krishnamurthy CW.13 had only received the sketch and the reports from the FSL and submitted the charge-sheet to the court. After the charge-sheet was submitted to the court, the committal court took cognizance

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of the offence alleged against the appellants-accused and in the normal course, they were committed for trial to the Court of Sessions. Before the trial court the appellants-accused having pleaded not guilty to the charges framed against them and claiming a trial, they were put on trial for the aforesaid offences.

6. In the course of the trial, the prosecution in order to substantiate its case against the accused, had examined on its behalf P.Ws 1 to 16 and placed on record Exs.P.1 to P.21 and M.Os 1 to 16. The defence has got marked on its behalf a true photostat copy of the MLC register as per Ex.D.1.

7. Out of the 16 witnesses examined by the prosecution, PW.1 Abubakar is the son of the deceased. He had come to the spot after his mother PW.2 came and informed him of the occurrence at the mosque where PW.1 was found offering Friday prayers. After reaching the spot, he was also told by the deceased about the occurrence. He took the deceased to the hospital, but the deceased had expired on the way to the hospital. He had lodged the first information report to the police station as per Ex.P.1. Subsequently he had pointed out the place of incident to the investigating officer. He also speaks to the motive aspect of the case. He is not an eye



witness to the occurrence, but he was informed of the occurrence by his mother PW.2. PW.2 Smt. Asiyamma is the mother of PW.1 and the wife of the deceased. She is an eye witness to the occurrence. She had come to the spot on hearing the commotion from the side of the house of PW.4 and witnessed the occurrence. After witnessing the occurrence, she went and informed the occurrence to the complainant PW.1 at the mosque. PW.3 Smt. Fathima is also an eye witness to the incident. Her house in the village is situated at a distance of about 100 ft. from the crime spot and she was attracted to the spot on hearing the commotion from the side of the house of PW.4. PW.4 Smt. Yashodamma did not support the case for the prosecution in its entirety and hence she was treated as hostile to the prosecution. The deceased was found lying with serious injuries on his person in front of the house and within the compound of her house. According to her when she was at the house of one Smt. Ameenabi, she was informed of the occurrence by one Smt. Mariyamma and she had come to the spot. She has stated that she did not witness the occurrence, nor she has been informed of the names of the assailants of the deceased by the said Mariyamma. In view of such answers given by her in her chief examination, she was treated as hostile. PW.5



Smt. Ameenabi is another eye witness to the occurrence. While returning to her house from the factory for lunch, she heard cries from the side of the house of PW.4 and she went there and witnessed the occurrence in question. The distance from her house to the house of PW.4 is very little and there are only two or three houses in between her house and the house of PW.4, where the incident in question had occurred. Thus out of the four eye witnesses examined by the prosecution, except PW.4, the rest of the eye witnesses have supported the case of the prosecution. Among the witnesses who supported the prosecution case, PW.2 Smt. Asiyamma is a close relative of the deceased while PW.3 and PW.5 are the independent eye witnesses. PW.6 Khader had come to the spot along with PW.1 from the mosque after they were informed of the occurrence by PW.2. He speaks to the dying declaration made by the deceased to PW.1. He also speaks to the motive aspect of the case. He is the brother-in-law of PW.2. PW.7 Abdul Khader is a panch witness for the spot panchanama Ex.P.2. PW.8 Sulaiman is the panch witness for the recovery panchanamas Ex.P.5 to P.7, but he did not support the case for the prosecution. Hence he was treated as hostile to the prosecution. PW.9 Mohammed is a witness for the inquest proceeding held on the dead body of



the deceased as per the inquest report Ex.P.8. He is also a panch witness for the seizure of the bloodstained clothes M.Os 1 to 6 from the person of the accused persons A1 to A3 under panchanama Ex.P.9. PW.10 Puttu is a panch witness for the seizure of the clothes that were found on the dead body of the deceased as per M.Os 7 to 10 under a panchanama Ex.P.10. PW.11 Yusuf is a panch witness for the seizure mahazar Ex.P.10 and is also a panch witness for the recovery panchanamas Ex.P.5, P.6 and P.7. But he has supported the case for the prosecution only to the extent of the recovery effected at the instance of accused persons A1 and A2, and he did not support the recovery effected at the instance of accused No.3. This witness was treated as hostile to the prosecution case. He has partially supported the case for the prosecution. PW.12 is a Police Constable who carried the FIR to the jurisdictional Magistrate at about 3-45 P.M. and delivered the same at about 4-45 P.M. at the residence of the Magistrate. He has explained the delay in delivering the FIR to the jurisdictional Magistrate. PW.13 is another Police Constable who had accompanied the Investigating Officer at the time of apprehending the accused persons A1 to A.3. PW.14 was the PSI of Sakleshpur, who registered the case and done a part of the investigation.



PW.15 was the CPI of Sakleshpur, who took up the further investigation of this case from the PSI PW.14 on 18.3.1998 and he has done a major part of the investigation. PW.16 is the doctor who conducted the post mortem examination on the dead body of the deceased and has issued post mortem report as per Ex.P.21. This in short is the summary of the evidence adduced at the trial by the prosecution.

8. The accused persons A1 to A3, when examined under section 313 Cr.P.C., have denied all the incriminating circumstances appearing against them in the prosecution evidence. They have not putforth any specific defence, nor did they examine any witness on their behalf. They would however admit the fact that PW.1 is the son of the deceased and P.W.2 is the wife of the deceased and one Mariyamma CW.3 is the younger sister of PW.2. They further admit the fact that the deceased was doing timber business. They would however denied the fact that they were also doing timber business. They further admit the fact that about two years prior to the date of death of the deceased, there was a quarrel between accused No.1 and the deceased in respect of certain masjid and in that regard or in respect of that incident, accused No.1 Abdul Ajeem had lodged a complaint.



against the deceased and others and that the said case was pending for trial in a court at the time of the murder of the deceased. They would also admit the fact that in respect of the very same incident, a complaint was also filed by the deceased against accused No.1 and others. They further admit the fact that PW.2 Smt. Asiyamma was knowing all the accused persons. That is to say, the accused persons were known to PW.2. According to them, PW.3 Fathima is a relative of PW.2, inasmuch as the daughter of the sister of PW.3 has been given in marriage to PW.1. Further when it was put to them in their statements recorded under section 313 Cr.P.C. that the house of Fathima PW.3 is at a distance of about 100 ft. from the house of PW.1, they have stated that it may be. They further admit the fact that PW.3 Fathima knew all the accused persons A1 to A3. Similarly, they admit the fact that PW.6 Khader knew all of them and also the deceased and P.Ws 1 and 2. They also admit the fact that there was some dispute between the accused persons A1 and A2 on the one hand and the deceased Adam and others on the other hand in respect of a mosque. But they would however state that the said dispute between them had been compromised. They further admit the fact that even PW.5 Ameenabi knew all of them. They have



further stated that while they were present in their respective houses at about 4.30 p.m. in the evening on 18.5.1998, they were taken from their houses to the police station. Thus they have denied the fact that they were apprehended at about 6-30 a.m. in the morning on 18.5.1998 near Ossor Estate. They would however admit the fact that on 18.5.1998 at about 5 p.m. in the evening they were produced before the court and were remanded to judicial custody. Accused No.1 has further stated that there was a dispute in respect of a mosque between the deceased Adam and one Balegadde Abubekar and he does not know the rest of the matter. Accused No.2 has also stated that there was a dispute in respect of a mosque between the deceased and one Balegadde Abubekar and he does not know the rest of the matter. In the course of his statement recorded under section 313 Cr.P.C., accused No.2 has produced certain documents, namely, the voters' list and the genealogical tree and also a certificate showing that there was a holiday for the school. Except producing these documents, he did not adduce any evidence to prove these documents. Accused No.3 has also stated that there was a dispute between the deceased Adam and one Balegadde Abubekar in respect of certain mosque and that he does not



know the rest of the matter. From the trend of the cross-examination made to the prosecution witnesses, it is quite clear that the defence did not dispute the murder of the deceased and that further the said incident having taken place in front of the house of PW.4. Their dispute is only with regard to the persons committing the crime.

9. At the conclusion of the trial, the trial court, on consideration of the entire material placed on record by the prosecution and after hearing the submissions on both sides, has convicted and sentenced the appellants in the manner as stated supra by its impugned judgment. Hence this appeal.

10. The learned counsel for the appellants in support of their appeal has contended as under:

That the evidence of PW.1 that his father was able to speak and he gave the names of these accused persons as his assailants cannot be believed as the same is inconsistent with the medical evidence on record and that therefore the complainant PW.1 has sought to implicate the accused persons falsely in the case by introducing a dying declaration of the deceased. In view of the long standing enmity between the accused persons and



the deceased, the false implication of these accused persons in the case cannot be ruled out; more so when there is an attempt made by the complaint PW.1 to say that his father was able to speak and he had made a dying declaration to him disclosing the names of these accused persons as his assailants. That the bloodstained clothes of PW.1 have not at all been seized by the investigating officer which creates a strong doubt of his having come to the spot and shifting the deceased to the hospital in the manner as stated by him. That further the memo sent by the doctor to the police did not mention the names of these accused persons as the assailants of the deceased, which creates a doubt about PW.1 having disclosed the names of these accused persons to the doctor when he had accompanied the deceased to the hospital. That the clothes of PW.2 which were stated to be bloodstained have also not been seized by the investigating officer and this creates a doubt about PW.2 being an eye witness to the occurrence. The statement of PW.2 was not recorded during the inquest panchanama, which also creates a doubt about her being an eye witness to the occurrence. That apart there is a delay of one day in recording the statement of the eye witness PW.3 by the investigating officer. Further one Mariyamma who is also stated to be an



eye witness to the occurrence has not at all been examined in the case and it is fatal to the prosecution case. That in the instant case all the eye witnesses have given an omnibus statement with regard to the assault committed on the deceased, but they do not say as to who gave the fatal blow to the deceased. They did not speak to each individual act committed by the accused persons and on the other hand they have only vaguely stated that all these accused persons had assaulted the deceased with certain weapons and they did not say the specific overt- acts committed by each of the accused persons. If really they had witnessed the incident in question, they would have certainly stated about the overt- acts committed by each one of the accused persons. The evidence of PW.4 who has turned hostile to the prosecution has stated that one Mariyamma had informed that the deceased had been murdered by some persons which clearly negates the evidence of PW.3 and the other eye witnesses. Further there is also one day delay in recording the statement of the eye witness PW.5 by the investigating officer. Even PW.5 has stated vaguely about the assault committed on the deceased without specifying as to the overt acts committed by each of the accused persons. Her presence at the spot is also doubtful being an employee of a



factory. PW.6 has made a material improvement at the trial so much so about the deceased disclosing the incident to PW.1. The evidence of PW.9 shows that the brain matter had come out and that being so it creates a strong doubt about the deceased making a statement to PW.1. That further the chopper was recovered from a place which was accessible to all and hence the recovery cannot be attributed to the accused. Further the said chopper was not to be bloodstained. That there is a delay in sending the FIR to the concerned Magistrate which has not been reasonably and satisfactorily explained. That in the instant case the FIR was entrusted to PW.12 and the same was delivered at about 4-45 P.M. to the Magistrate. Under the circumstances, therefore, the delay has been made use of to deliberate and concoct a case against the accused persons. Further there is a delay of about 27 days in sending the incriminating articles to the PSI for their chemical examination. The evidence of the doctor PW.16 clearly improbabilises the evidence of PW.1 with regard to the dying declaration made by the deceased to PW.1. The presence of all these alleged eye witnesses at the spot is highly doubtful and hence no implicit reliance can be placed upon their evidence; there is conflict between medical evidence and the oral evidence. The



deceased might have been killed by some other persons and the blame was sought to be put on these accused persons on account of the previous enmity between them. That in the instant case the blood group has not been done and hence the accused cannot be connected with the crime on the basis of the recoveries effected at their instance. That therefore this is a case where the accused have been falsely implicated in the case due to previous enmity. That even assuming that the accused persons A1 to A3 had participated in the incident, there is nothing on record to show as to who actually caused the fatal injury to the deceased and in the absence of which evidence, they cannot be convicted under section 302 IPC. That at any rate there is no evidence to show that the accused persons A2 and A3 had inflicted any fatal injury to the deceased and hence they cannot be convicted for the offence under section 302 IPC.

11. In support of his submissions, the learned counsel for the appellants has placed reliance upon the following decisions: 1996 Cri.L.J. p. 4461, wherein the Hon'ble Supreme Court in the case of Devinder vs. State of Haryana has observed as under:

"Penal Code (45 of 1860), S.300 -Murder-Proof -  
Benefit of reasonable doubt - In the medico-legal  
report sent to police, though name of injured,



his address, his occupation, and account of how injuries caused finding place, name of accused, not finding lace, meaning thereby that name of assailant was not disclosed at the earliest available opportunity - Further, no special report as to registration was sent to Magistrate on day of occurrence when FIR was received but it was sent on next day - Held, version of prosecution that FIR did not see the light of the day till the death of the injured - Accused is entitled to benefit of doubt."

2003 Cri. L.J. p. 3901, wherein the Hon'ble Supreme Court in the case of State of Rajasthan vs. Rajaram has observed as under:

"Penal Code (45 of 1860), S.300 - Murder - Circumstantial evidence - Death by gun shot injury - Alleged extra-judicial confession made by accused before witnesses who were inimically deposed towards him - Not reliable - Blood stained clothes allegedly seized on being pointed out by accused p Presence of witness at the time of recovery is doubtful as he has been found to be an unreliable witness - Neither the blood group of the deceased nor that of the accused was determined - Possibility of the blood being that of the accused cannot be ruled out - Acquittal of accused, proper."



2004 Cri.L.J. p. 22, wherein the Hon'ble Supreme Court in the case of Badam Singh vs. State of Madhya Pradesh has observed as under:

"Criminal P.C. (2 of 1974), s.374 - Appeal against conviction - High Court being final court of fact - Should examine evidence critically - Merely because eye witnesses have consistently deposed against accused - Holding that prosecution has proved its case - Not a correct approach, for first appellate Court."

2004 Cri. L.J. p. 654, wherein the Hon'ble Supreme Court in the case of State of Rajasthan vs. Taran Singh and another has observed as under:

"Penal Code (45 of 1860), S.300 0 Murder - Eye-witness - Presence at spot - Deceased profusely bleeding after receiving gun shot - Eye witnesses who were accompanying deceased stated to have carried victim on shoulder - No blood-stains as yet found on clothes of witnesses - Is an impossibility - Presence of eye witnesses doubtful."

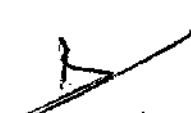
1991 SCC (Criminal) p. 61, wherein in the Hon'ble Supreme Court in the case of Baldev Singh vs. State of Punjab has observed as under:



"Evidence Act, 1872 - Section 45 - Expert evidence - Pistol and fired cartridge seized on January 15 but sent to Forensic Science Laboratory only on January 27 - Director of the Laboratory opinion that the cartridge was the one fired through the pistol in question - Held, delay in sending the crime articles to the Laboratory creates doubt about the connection of the cartridge with the crime."

12. As against this, the learned Addl. S.P.P. for the respondent State in support of the impugned judgment and order of conviction passed by the trial court has contended as under:

That there was bad blood between the accused and the deceased and on account of such enmity the deceased was assaulted by the accused on that relevant day. The incident in question took place at about 1-20 p.m. and the first information was lodged at about 2-20 p.m. and the same was delivered to the concerned Magistrate at about 4-45 p.m. Having regard to the manner in which the FIR came to be lodged to the police soon after the occurrence, there is absolutely no scope for any concoction to falsely implicate the accused persons. There has been no undue delay in lodging the FIR to the police having regard to the sequence of events in the case. More so, when an every effort was made



to save the deceased and in that process there was some delay which in the circumstances of the case stands explained. There is nothing on record to show that there was any deliberation to concoct a false case against the accused. That apart, in the instant case there is absolutely no scope for any deliberation and concoction. The incident in question took place in a broad day light in the residential locality where all these witnesses were residing and that being so they are the natural witnesses to the incident. There is absolutely no reason to doubt the evidence of any of these eye witnesses more so when their evidence finds corroboration from the medical evidence and the other attending circumstances in the case. The laps on the part of the investigating agency in not seizing the blood-stained clothes of PW.1 and others may not be fatal to the prosecution case. Further non-examination of one Mariyamma and the husband of PW.4 is not in any way fatal to the prosecution case as it would have only duplicate the evidence which has already been placed on record by the prosecution. That in the instant case there was a conjoint assault by all the accused persons and hence they are liable with the aid of section 34 of IPC for offence under section 302 IPC. The situation in which the assault was committed,

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it may not be possible for the witnesses to observe and say as to who caused which injury to the deceased. Under the circumstances, therefore, the impugned judgment and order of conviction passed by the trial court warrants no interference by this Court in the appeal.

13. In support of his submissions, the learned Addl. S.P.P. for the respondent-State has placed reliance upon a decision of the Hon'ble Supreme Court in the case of Hukam Singh vs. State of Rajasthan, reported in 2000 (7) SCC 490, wherein it is held as under:

"In trials before a Court of Session the prosecution "shall be conducted by a Public Prosecutor". Section 226 of the Code enjoins on him to open up his case by describing the charge brought against the accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knows at that stage itself that certain persons cited by the investigating agency as witnesses might not support the prosecution case he is at liberty to state before the Court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in court. If that version is not in support of the prosecution case it would be unreasonable to insist on the Public



Prosecutor to examine those persons as witnesses for prosecution.

When the case reaches the stage envisaged in Section 231 of the Code the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. At the said stage the Public Prosecutor would be in a position to take a decision as to which among the persons cited are to be examined. If there are too many witnesses on the same point the Public Prosecutor is at liberty to choose two or some among them alone. That principle also applies when there are too many witnesses cited, if they all had sustained injuries at the occurrence. It is open to the Public Prosecutor to inform the Court that he does not propose to examine the remaining persons in that category. This will help not only the prosecution in relieving itself of the strain of adducing repetitive evidence on the same point but also help the Court considerably in lessening the workload."

14. Having heard the submissions on both sides and having carefully perused the entire materials placed on record by the prosecution in the light of the decisions relied upon by the learned counsel on either side, the question for consideration is: Whether the impugned judgment and
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order of conviction passed by the trial court warrants any interference in the appeal by this Court?

15. It is needless to point out that a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect of the case. That is to say there cannot be any precedent in so far as the criminal cases are concerned which mainly depends upon the facts of each case. In this connection a reference may be made to the two decisions of the Hon'ble Supreme Court in the case of Ashwani Kumar Singh vs. U.P. Public Service Commission 2003 AIR SCW 3387 and in the case of Parasa Raja Manikyala Rao vs. State of A.P. reported in 2003 AIR SCW p. 5729.

16. In Parasaraj vs. State of Andhra Pradesh, reported in 2003 AIR SCW p. 5729, the Hon'ble Supreme Court has observed as under:

"To imprint fact situation of one decided case upon another or observations made in the peculiar facts of a given case to any or every other case notwithstanding dissimilarity in effect and the distinctive



features is legally impermissible. Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

It has to be further stated that while appreciating the evidence of the prosecution witnesses in a criminal trial, minor discrepancies on certain trivial and incidental matters without affecting the substratum of the prosecution case, ought not to prompt the court to reject the evidence in its entirety. If the general tenor of the evidence given by the prosecution witnesses and the trial court upon appreciation of the evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons.

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It is the totality of the situation which has to be taken note of. It is needless to record that difference in some minor details which does not otherwise affect the core of the prosecution case, may be there, but that by itself would not prompt the case to reject the evidence on minor variations and discrepancies. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in the case of Leela Ram vs. State of Haryana, reported in 2000 SCC (Cri.) p. 222. Furthermore, the principle repeatedly laid down by the Apex Court in appraising the evidence is that the courts do not in this country act on the maxim "falsus in uno falsus omnibus". It is the duty of the court to separate the grain from the chaff. Falsity of a particular material witness or a material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The said maxim has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of



circumstances, but it is not what may be called a mandatory rule of evidence. The doctrine is a dangerous one especially in India, for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that the administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however truth in the main. Therefore it has to be appraised in each case as to what extent the evidence is worthy of acceptance and merely because in some respects the court considers the same to be insufficient by placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. An attempt is to be made to separate the grain from the chaff, truth from falsehood. Normal discrepancies in evidence which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence are always there, however honest and



truthful a witness may be. Furthermore, the over insistence on witnesses having no relation with the victims often results in criminal justice system going awry. When any incident happens near a dwelling house of the victim in a small village, the most natural witness would be the inmates of the house of the victim who would be attracted to the spot on hearing the cries or commotion. It would be unpragmatic to ignore such natural witnesses and insist on outsiders who would not have seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person had witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such persons as prosecution witnesses. Otherwise, merely on surmises, the court should not castigate a prosecution for not examining the other persons of the locality as prosecution witnesses.

17. The prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it, though the neighbourhood may be replete with other residents also. Further exaggerated devotion to the Rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy the Social defence.



Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape, than punish an innocent. Letting the guilty escape is not doing justice according to law. The prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial, if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonder whether in the meticulous hypersensitivity, to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline and not a fetish. Vague hunches cannot take the place of judicial evaluation. A Judge does not preside over a Criminal Court merely to see that no innocent man is punished. A Judge also proceeds to see that a guilty man does not escape. Both are public duties. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. In considering the effect of each allegation proved to be incorrect or the likelihood of its being true or untrue, we have to view in the light



19. In the instant case, we shall first consider the medical evidence on record. The post mortem examination on the dead body of the deceased was conducted by the Doctor P.W.16, who found as many as 15 external antemortem injuries on the dead body of the deceased. Out of the 15 external injuries found on the dead body of the deceased, 9 of them were incised injuries, 3 of them were lacerated injuries, one crushed incised injury and the remaining two of them were abrasions. On dissection of the dead body of the





xerox copy of the MLC register extract signed by one Dr. Shyamala Devi at Ex. D.1, he has stated that it has been mentioned therein that the deceased Adam was assaulted by some persons around 1.30 p.m. on 15.05.1998 at Achangi village. Apart from this, no material has been elicited in the cross-examination of the Doctor P.W.16 by the defence.

20. From the trend of the cross-examination by the defence to the Doctor P.W.16, it is quite clear that the defence did not seriously dispute the cause of death of the deceased that, it was caused due to violence i.e., to say the deceased having met with a homicidal death was not seriously disputed by the defence. Even otherwise, the above evidence of the Doctor - P.W.16 which stands corroborated from the contemporaneous record like the post mortem report Ex.P1 would clearly indicate that the deceased had died of violence. There is nothing in the cross-examination of the Doctor P.W.16 to doubt or to discredit his evidence with regard to the nature of the injuries sustained by the deceased and the cause of death of the deceased and as also the probable weapons with which the injuries were inflicted on the deceased. Therefore, from the bare perusal of the medical evidence referred to above, it would appear that the same supports the prosecution case in all particulars. Apart



from this, the objective findings of the Investigating Officer P.W.14, who held the inquest proceedings on the dead body of the deceased and recorded in the inquest report Ex.P.18, also supports the prosecution case. The peremptory finding recorded by the Investigating Officer P.W.14 after observing the wounds found on the dead body of the deceased in the inquest report Ex.P.18 would show that the deceased had died of violence. In fact even the defence has thrown a suggestion to P.W.2 that her husband had been killed or murdered by Ismail, Abubekar and Lathif and not by the accused persons. No doubt, the said suggestion made by the defence has been denied by P.W.2 but the fact that still remains on record is that the deceased had been murdered or killed by some persons and that he had not die either a natural death or an accidental death. Therefore, from the materials placed on record by the prosecution it can safely be concluded that deceased Adam had met with a homicidal death and he died of violence.

21. The Trial Court which considered this aspect of the case in detail, has observed in the course of its impugned judgment as under;

"Point No.1 : Prosecution to prove that deceased Adam died homicidal death,



examined P.Q.16 - Dr.G.M.Vamadev. It is the evidence of P.W.16 - Dr.G.M.Vamadev that, on 15.05.1998 at about 2.00 p.m. the dead body of Adam was received in their hospital by Dr.Shyamala Devi. He further states that, he conducted post-mortem examination over the dead body of Adam between 4.40 p.m. and 5.45 p.m; on examination, he found the following injuries:-

- (1) Incised wound over the vertex, runs horizontally from right parietal region to the occipital region measuring 7"x2" x3", severe bleeding present, skull broke open in occipital region with brain matter coming out.
- (2) Incised wound over the left parietal regions 3" x 1/2 " x 1" with cut in the left parietal bone.
- (3) Incised wound over the face extends from left nostril to chin 3" x1" x 1" with cut in the mandibular bone with loosening of lower incisors.
- (4) Incised wound over the right fore-arm near the wrist on the lateral side 2" x 1" x1" with fracture radius in the dorsal third.
- (5) Incised wound over the base of right thumb with amputation of metacarpal bone at the base 1" x 1/2" x1".



- (6) Incised wound over the palmar aspect of right index finger in the tip 1" x ¼" x ¼".
- (7) Abrasion over the inner aspect of right thigh in the middle 1" x ½".
- (8) Lacerated wound over the lateral aspect of left leg near the patella ½" x ¼".
- (9) Lacerated wound over the lateral aspect of left leg 1" x ¼".
- (10) Incised wound over the dorsal aspect of left wrist joint 3" x ½" x 2" with fracture of radius in the dorsal third.
- (11) Crushed incised wound over the palmar aspect of left hand with fracture of all metacarpal bones.
- (12) Incised wound over the back of left elbow 2" x ½" x 1" without cut in the elbow joint.
- (13) Incised wound over the lateral aspect of left deltoid region 3" 1½" 2".
- (14) Multiple abrasions over the lateral aspect of left deltoid region of various shapes and sizes.
- (15) Laceration over the left inframammary region 3" x ¼".

P.W.16 - Dr.G.M.Vamadev further states that, all the injuries were ante-mortem in nature. He further states that, on dissection, he found open fracture of occipital bone and this injury corresponds to external injury No.1. It is the opinion of this witness that the death of Adam was

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due to haemorrhage and shock as a result of injury to the vital organ, i.e., brain and multiple injuries to musculoskeletal structures. The doctor further opines that, all the incised injuries mentioned in post-mortem report can be caused by sharp cutting instruments and injury No.11 and other lacerated wounds can be caused by blunt end or handle of a weapon. Accordingly, he has issued the post-mortem report as per Ex.P.21.

This witness is cross-examined by the learned counsel for the accused. The fact that this witness noticed the injuries mentioned in the post-mortem report Ex.P.21, and that the said injuries were ante-mortem in nature and the death of deceased was due to the injuries sustained by him as mentioned above, is not denied during the course of cross-examination. Therefore, the prosecution, by examining this witness, has proved that the death of deceased Adam was a homicidal death? My finding on point No.1 is accordingly answered in the 'affirmative'."

Having considered the relevant evidence placed on record independently, we find that the said finding recorded by the Trial Court is quite correct and proper and it does not



warrant any interference by this Court in the appeal and accordingly, we confirm the said finding of the Trial Court.

22. Now, the most vital or crucial question for consideration is who caused the homicidal death of the deceased ? In other words, the fact that the deceased Adam died of violence on 15.05.1998 at about 1.20 p.m. in the afternoon on the road in front of the house of P.W.4 in Achangi village having been established from the materials placed on record by prosecution, the next crucial question for consideration would be who did him to death or who caused his death ?

23. To establish this fact, firstly, we have the eye witness account of the mortal attack as given by P.W.2 - Smt.Assiyamma, P.W.3 - Smt.Fatheema and P.W.5 - Smt.Ameenabi. Secondly, we have the incriminating facts consisting of the recovery of the blood stained clothes from the person of the accused persons A1 to A3 after their arrest by the police and the discovery under Section 27 of the Evidence Act, of certain material objects pursuant to the Statement made by the accused persons, supported by the Investigating Officer P.W.15 and the panch witnesses and



the report of the chemical examiner received from the FSL Ex.P.20.

24. In the instant case, the Trial Court was not persuaded to accept the dying declaration stated to have been made by the deceased, a little before he expired, to his son P.W.1 in view of the medical evidence given by the Doctor P.W.-16 and having regard to the nature of the injuries sustained by the deceased. With vigilant scepticism, let us scan the important evidence placed on record by the prosecution without going over to the whole ground again.

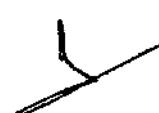
25. The lethal attack is alleged to have been made on a road in front of the house of one Smt.Yashodamma P.W.4 at about 1.20 p.m. in the afternoon in Achangi village. The incident in question which is alleged to have been witnessed by Smt.Asiyamma P.W.2, the wife of the deceased, was informed by her to her son P.W.1 Abu Bekar at about 1.30 p.m. in the afternoon near the Mosque of the village where P.W.1 had gone to offer the Friday prayers. On being so informed by his mother, P.W.1 Abu Bekar came to the spot along with few others, saw his father, deceased Adam, lying with injuries on the spot and the injured Adam was immediately shifted for treatment to the Hospital by means



of an autorickshaw. But before the injured Adam could reach the Hospital at Sakleshpur, he has expired on the way and the Doctor, who examined the deceased in the Government Hospital at Sakleshpur Town, found him to be brought dead to the Hospital. It appears that the injured Adam had expired on the way to the Hospital at about 1.45 p.m. in the Hospital. Thereafter, the complainant P.W.1 Abubecker proceeded to the Sakaleshpura Town Police Station where he lodged the complaint as per Ex.P.1 with the PSI P.W.14 on the same day at about 2.20 p.m. In the mean time a memo had also been sent from the Hospital to the police station and the same was received by the PSI P.W.14 at the police station at about 2.15 p.m in the afternoon. The said memo is as per Ex.P.15. Thus, it appears that the intimation sent from the Hospital as per Ex.P.15 was received by the PSI P.W.14 at about 2.15 p.m. and at about 2.20 p.m., the complainant P.W.1 appeared before the PSI P.W.14 at the police station and presented his written complaint as per Ex.P1. Under the circumstances, therefore, we do not find anything unnatural in the conduct of the complainant P.W.1 or any of the relatives of the deceased. They were more keen on the injured Adam, being taken to the Hospital and given a proper treatment. Similarly, the wife



of the deceased P.W.2 who witnessed the incident, was more keen to inform the incident to her son P.W.1 who was available at the Mosque, in order to save the life of her deceased Husband. In the instant case, the information to the police was also given by the Doctor who received injured body of the deceased at the hospital and the same has been spoken to by the PSI P.W.14 who has stated that on 15.05.1998 at about 2.15 p.m. he received intimation regarding the murder of Adam from the Government Hospital at Sakleshpur as per Ex.P.15. Immediately after the deceased was examined by the Doctor at the Government Hospital in Sakleshpur and found him to be brought dead to the Hospital, the complainant P.W.1 proceeded to Sakleshpur Town Police Station and lodged his complaint with the PSI P.W.14 at about 2.20 p.m. True, the Doctor P.W.16, in the course of his cross-examination has stated that in the MLC register extract pertaining to the deceased, it has been mentioned by Doctor Shamala devi that the deceased Adam was assaulted by some persons around 1.30 p.m. on 15.05.1998 at Achangi village as per the MLC register Ex.D1. But then, it has to be stated that it was not necessary at all to mention all the statements made to the Doctor by the persons who brought the patient to him in the



MLC registered or in the memo sent to the police. It was not the part of the duty of the Medical Officer. It is needless to point out that the paramount attempt on the part of the relatives of the deceased to save the life of the deceased and accordingly, in this case P.W.2 who witnessed the incident in question had immediately rushed to his son P.W.1 who was available in the Mosque and as soon as he was informed of the incident, he came to the spot along with few others and tried to take the deceased to the Hospital at Sakleshpur Town.

26. From the circumstances appearing in the case, the First Information report Ex.P1 has been laid promptly without undue delay by the complainant P.W1 with the PSI PW 14 at Sakleshpura Town Police Station regarding the incident. No doubt there has been some delay on the part of the police in delivering the FIR to the concerned Magistrate. But, that by itself will not be sufficient to discredit the version given in the FIR Ex.P1 which was lodged promptly without undue delay. When there has been no delay in lodging the FIR Ex.P1 of the incident to the Police, the mere delay on the part of the police in sending the FIR to the concerned Magistrate will be of no consequence and more so



in a case of this nature where no act of malafide could be attributed against the police.

27. No doubt it was sought to be argued by the learned counsel for the appellant that when the evidence of P.W.1 indicates that he has mentioned the occurrence to the Doctor and when the MLC register extract EX D1 does not contain the names of the assailants of the deceased, it creates a doubt whether the deceased was in fact had been assaulted by accused persons or by some other persons. But, it has been pointed out that the MLC register extract Ex.D1 only says that the deceased Adam was assaulted by some persons and it does not mean that he was not assaulted by these accused persons. That apart, the person who made entries in the MLC register namely Dr.Shamala Devi has not been examined in the case to speak to the fact as to who made such a statement before her. There is nothing on record to show that the history furnished to the Doctor as has been incorporated in the MLC registered extract was given either by P.W.1 or by P.W.2. In the absence of any such evidence, merely because the entry made in the MLC register extract Ex.D1 shows that the deceased was assaulted by some persons, the testimony given by P.W.1 & P.W.2 in Court cannot be discredited. Therefore, we do not



find any merit in the contention advanced by the learned counsel for the appellants.

28. It appears that there is no mention in the inquest report Ex.P.18 of P.W.s 2, 3 & 5 being the eye witnesses to the crime. But the inquest report Ex.P.18 clearly mention the name of complainant P.W.1 Abubecker and even the statement of the complainant P.W.1 that was recorded during the inquest proceedings, is almost in consonance with the version given by him in the FIR Ex.P1 and that would clearly mention about P.W.2 and others being the eye witnesses to the occurrence. Further, under Section 174 read with Section 176 of Cr.P.C., the inquest report is prepared by the Investigation Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries as also the possible or peremptory cause of death. In the case of **Podda Narayana V/S. State of Andhra Pradesh** reported in **AIR 1975 SC 1252** it was held by the Hon'ble Supreme Court that the identity of the accused is outside the scope of inquest report prepared under Section 174 of Cr.P.C. In **George V/S. State of Kerala** reported in **AIR 1998 SC 1376**, it has been held that the Investigating Officer is not obliged to investigate at the stage of inquest, or to ascertain as to who were the



assailants. It is now well settled that the inquest report cannot be treated as substantive evidence, but, may be utilised for contradicting the witness of inquest. Under the circumstances, therefore, mere non-mentioning of the names of the eye witnesses in the inquest report Ex.P18 will be of no consequence in the case more so when the complainant P.W.1 who had been examined during the inquest proceedings has made his Statement which is in consonance of the FIR E.X. P1. It may be stated even at the cost of repitition that in an inquest under Section 174 of Cr.P.C. all the witnesses to an incident need not be examined as an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and the only evidence necessary to establish it need to be brought out. Hence, the fact that the name of the prosecution witnesses does not find a place in the inquest report, does not prove that he was not an eye witness to the incident. In this connection a reference may be made to a decision of the Hon'ble Supreme Court in case of **Shakhila Khader V/S. Noushergama** reported in **AIR 1975 SC 1324**. Under the circumstances, therefore, we find no merit in the contention of the learned counsel for the appellants that the non-examination of P.W.2 during the inquest proceedings is fatal to the prosecution. As we have



already stated in an inquest under Section 174 of Cr.P.C, all the witnesses to an incident need not be examined as an inquest under Section 174 of Cr.P.C. is concerned with establishing the cause of death and the only evidence necessary to establish it need be brought out. Hence, the fact that P.W.2 was not examined during the inquest proceedings does not in any way discredit the case of the prosecution.

29. Now, let us get into the core of the matter to ascertain whether reasonable doubts about the prosecution case are available on the record and have we the credible evidence of the eye-witnesses and have we corroborating circumstances against the reliability of the prosecution case and the accused a plausible explanation for incriminating articles found on their person as well as the incriminating discoveries ? As stated earlier, there are three types of evidences adduced on behalf of the prosecution. The eye witnesses must naturally figure most prominently in a Judicial search for the truth.

30. The first of the eye witnesses to be examined in the case is P.W.2 Smt.Asiyamma, wife of the deceased and the mother of the 1<sup>st</sup> informant P.W.1. The other two eye



witnesses to the occurrence who supported to the prosecution case are P.W.3 Smt.Fatheema and P.W.5 Smt.Ameenabi. Out of the three eye witnesses, who supported the case for the prosecution, though P.W.2 being the wife of the deceased can be considered to be an interested witness, P.W.s 3 & 5 are totally independent witness who have no axe to grind against the accused persons i.e., to say, they have absolutely no motive or enmity to falsely implicate the accused persons. It is needless to point out that strong grounds must exist to disbelieve such witnesses who have no motive to falsely implicate the accused. It appears that the distance between the houses of P.W.2 i.e., the House of the deceased and the house of P.W.4 in the village was less than 400 ft. In other words, the place of incident was situated at a distance of only about 400 ft. from the house of the eye witness P.W.2. Likewise, the distance from the house of the other eye witness P.W.2 to the house of P.W.4 was about 100 foot steps. It is to be seen therefore, that the houses of P.W.2 & P.W.3 were situated at a little distance from the place of incident, which was located near the house of P.W.4. Further more, in the instant case, the deceased, the accused and the material witnesses for the prosecution including P.W.s 2, 3 &



5 are all residents of Achangi village, which appears to be a very small village consisting of only about 150 houses. Therefore, the village where the incident in question had occurred is a very small village and the house of the two eye witnesses P.W.s 2 & 3 were in the close proximity or vicinity of the house of P.W.4, in front of whose house the incident in question had occurred. That apart, the time of incident was around 1.20 or 1.30 p.m. in the forenoon. Normally, at such hour of the day, the village atmosphere will be quite peaceful. In the fact situation, there is nothing strange, if P.W.s 2 & 3 had been attracted to the spot on hearing the commotion or cries from the direction of the house of P.W.4. Further it is in evidence that, when the male members of the village were to go for work during the day time, the female members of the village, who do not go for work, will remain in their respective houses. Accordingly, both P.W.2 & P.W.3 while they were so present in their respective houses in the village, heard the cries or commotion from near the house of P.W.4 and they went there and witnessed the incident in question which had occurred in front of the house of P.W.4. They have both clearly stated the manner in which the assault was committed on the deceased by these appellants. While the incident was still going on, the witness P.W.2 went



and reported the occurrence to her son P.W.1 who was available at the Mosque. The day in question being a Friday, P.W.1 had gone to the Mosque for offering the Friday prayer. At that time, the witness P.W.2 was so grief stricken and panicky that on hearing her cries, not only her son P.W.1, but also few others who were in the Mosque came outside the Mosque and heard the woeful story narrated by P.W.2 to her son P.W.1 regarding the occurrence. The evidence of the complainant P.W.1 clearly corroborates and supports the version given in Court by P.W.2. Even the contents of the FIR Ex.P1 lends assurance to the version given by P.W.1 & P.W.2 in Court. Little injury has been inflicted on the testimony of P.W.2 in the cross-examination by the defence and no serious reason has been made out before this Court why the Trial Court's acceptance of the version of P.W.2 should be rejected. Apart from describing the evidence of P.W.2 as unnatural and interested and vague, precious little has been elicited by the defence in the cross-examination to discredit her evidence. It is now well settled that the relationship is not a factor to affect the credibility of a witness and it is more often than not, that a relation would not conceal the actual culprits and make allegations against the innocent persons. Foundation has to be laid if plea of false implication





cannot be a ground to discard the evidence of P.W.2 & P.W.3. Out of the two witnesses P.W.2 and P.W.3 who were attracted to the spot on hearing cries from their respective house, P.W.3 - Smt.Fatheema is totally an independent witness. She has also stated in her evidence with regard to the manner of assault committed on the deceased by these accused persons. May be that P.W.s 2 & 3 have not spoken about the overt acts committed by each of the accused, that by itself is not sufficient to discredit their evidence. Whatever that has been observed and seen by them has been spoken to by them in Court. As we have already stated, there is absolutely no reason for P.W.3 to falsely implicate the accused persons in such ghastly incident.

31. Then, we have the evidence of another eye witness P.W.5 Smt.Ameenabi, who, while returning to the house from the factory for lunch was attracted to the spot on hearing the commotion in front of the house of P.W.4. The fact that she was attending to the factory for work has not been seriously challenged or disputed by the defence or at any rate, there has been no serious challenge in the cross-examination of P.W.5 on this point by the defence. She is also an independent witness and there is no reason for her to depose falsely against these accused persons. The incident



in question having occurred on the road in front of the house of P.W.4, they cannot be considered to be the chance witness and on the other hand they are the most natural and probable witnesses to the occurrence, who had come to the spot on hearing the cries or commotion from near the house of P.W.4. As we have already stated that it is a small village and with regard to the time of occurrence, the women folk of the village can be found in the house, the men folk having gone for work outside the houses. Normally at that hour of the day, the village life will be somewhat silent and peaceful. Therefore, there is nothing strange if the cries were heard by P.W.2 & P.W.3 while they were present in their respective houses. In so far as the P.W.5 is concerned, her house was very close to the house of P.W.4 and she was attracted to the spot while she was on her way to the house for lunch.

32. When once P.W.2, 3 & 5 are held to be trust worthy witnesses, then, there does not seem to be any cogent reason for not acting upon their evidence. The fact that the other persons who were present at the spot and had witnessed the occurrence have, without any good reason and perhaps with oblique motive chosen not to say the truth in Court and thereby to obstruct the course of justice would, in our opinion, provide a sound reason for accepting the testimony



of P.W.s 2, 3 & 5 for sustaining the conviction of the accused persons. To decline to act upon the testimony of these three witnesses P.W.s 2, 3 & 5 merely because of the absence of the other witnesses to corroborate them in Court is to defeat the cause of justice in this case. Having carefully perused the evidence of these 3 witnesses P.W.s 2, 3 & 5, we find that there appears to be an intrinsic ring of truth in the statements of these 3 witnesses which disclose no infirmity. There is no general rule that the evidence of the relations of the deceased must be corroborated for securing the conviction of the accused. In the present case, the straight forward nature of the deposition of these 3 witnesses and the fact that they were undoubtedly in a position to identify the accused persons coupled with the fact that the incident in question had occurred in broad day light in front of the house of P.W.4, leave no reasonable doubt about the guilt of the accused persons. The Trial Court which critically analyzed the evidence of these three witnesses found their evidence to be acceptable and trustworthy. While accepting their evidence or testimony in Court, the Trial Court has observed in the course of this impugned judgment as under,

"P.W.2 - Asiyamma, P.W.3 - Fathima and  
P.W.5- Ameenabi are all women. P.W.2 -  
Asiyamma and P.W.3 - Fathima are house



wives. The incident according to prosecution, has taken place at about 1.20 p.m. on 15.05.1998. Taking into consideration the time of incident, it is but natural that house wives would be present in their respective houses. The evidence of P.W.1 - Abubekar, during the course of cross-examination, reveals that, the distance between his house and the house of P.W.4 Yashodamma is less than 400 feet and not 800 feet as suggested, the distance between the House of P.W.3-Fathima and the house of P.W.4 - Yashodamma is 100 foot-steps. These details are elicited in the cross-examination. It is the evidence of P.W.2 - Asiyamma and P.W.3 -Fathima that, on hearing the shouting of a person, they reached near the scene of offence. The distance between the house of P.W.2 - Asiyamma and P.W.4 Yashodamma being less than 400 feet and the distance between the house of P.w.3 - Fathima and the house of P.W.4 - Yashodamma is being less than 100 foot-steps, it is quite possible that they might have heard the shots of a person. It is the contention of the learned counsel for the accused that, even if they had heard the shouts of a person and had reached near the scene of offence, by that time the incident must have been over. The evidence of P.w.2 - Asiyamma show that, in the



morning, deceased Adam left the house to go to Puttur and he was expected to return by 'namaz' time. The incident, as can be seen from the scene of offence mahazar - Ex.P.2 and rough sketch Ex.P.19, has taken place near the house of P.W.4 - Yashodamma. There is a road in front of the house of Sundaramma beyond the fence. On both the side of the said road, there are drainages. The width of the said road is about 19 feet. Near the fence to the house of P.W.4 - Yashodamma, there are marks of movement of people and the blood-stains are also seen. Near the said fence, stone pillars are fixed and in the said pillars, iron gates are fixed. The blood-stains are also seen on the said stone - pillars. From the said road, the house of P.W.4 - Yashodamma is at a distance of about 25 yest. From a distance of about 2 feet from the front door of Yashodamma, the blood had fallen and it had clotted. Further, it is seen that there is a trail of blood measuring 6½ feet and the blood had clotted. Therefore, it is clear that, the deceased Adam was first assaulted on the road near the house of P.W.4 - Yashodamma and he tried to save himself by running here and there and ran towards the house of Yashodamma and ultimately he was assaulted near the house of P.W.4 - Yashodamma. Taking into



consideration these facts, it is quite possible that, when P.W.2 - Asiyamma and P.W.3 - Fathima heard shots of a person, they left their house and reached the scene of offence and at that time, still the assault on Adam was continued. Therefore, it cannot be said that P.W.2 - Asiyamma and P.W.3 - Fathima were not at all able to see any assault on Adam made by these accused.

P.W.5 - Ameenabi is working in a factory near her village. When she reached near the scene of offence, she heard shouts of a person and then she saw accused No. 1 to 3 assaulting deceased Adam. The evidence as elicited in the cross-examination of P.W.5 - Ameenabi shows that, she goes to work in the factory at about 8.30 a.m.; the lunch time for the said witness in the factory commence at 1.00 p.m. It was suggested to this witness that, she goes to work in the morning and returns home only in the evening, and it was further suggested that, the lunch hours in the said factory are between 2.00 p.m. to 3.00 p.m. by making these suggestions, it is admitted by the defence that, P.W.5 Ameenabi works in the said factory. The evidence of this witness shows that, the distance between her house and the factory is about  $\frac{1}{2}$  a kilometer. If the lunch hour of



the said factory starts at 1.00 p.m. and if she had reached the scene of offence by about 1.20 p.m. at the time of incident, her evidence appears to be natural. As already indicated by me, there is nothing on record to show that P.W.3 - Fathima and P.W.5 - Ameenabi are relatives of complainant and they have anything against the accused to falsely implicate these accused persons in this case. Further, it is the evidence of P.W.s.2, 3 and 5 that, deceased Adam was assaulted by choppers and the injuries were caused to the deceased by sharp cutting weapons like choppers. This evidence of P.W.2 - Asiyamma, P.W.3 - Fathima and P.W.5 - Ameenabi finds corroboration in the medical evidence. There are as many as 9 incised injuries on the person of deceased Adam and the details of injuries are given in post-mortem report Ex.P.21. It is the evidence of P.W.16 - Dr.G.M.Vamadev that, all the incised injuries mentioned in the post-mortem report Ex.P.21 can be caused by sharp cutting instrument. The fact that the injuries found on the deceased Adam can be caused by sharp cutting instruments, is not disputed by the defence during the course of cross-examination. Therefore, the evidence of P.W.2 - Asiyamma, even if she is treated as an interested witness, finds corroboration from



the independent witnesses like P.W. 3 - Fathima, P.W.5 - Ameenabi and P.W.16 - Dr. G.M.Vamadev. Further, it is the evidence of P.W.1 - Abubekar that, on the date of incident, he had gone to masjid to offer 'namaz'; at about 1.30 p.m. his mother came crying to the Masjid and informed him about the incident. P.W.6 - R.Khader, who during the course of cross-examination in para No.7, admits that, P.W.2 - Asiyamma is elder sister of his wife - C.W.3 - Mariyamma, states that, when he was in the Masjid, at that time, P.W.2- Asiyamma came and informed P.W.1 - Abubekar that, deceased is assaulted by accused No.1 to 3. Therefore, immediately after the incident, P.W.2 - Asiyamma has proceeded to the Masjid and disclosed the names of assailants of Adam, to P.W.1 - Abubekar. It is the contention of the learned counsel for the accused that, the evidence of P.W. 1 - Abubekar and P.W.6 - Khader, being relatives and interested witnesses, their evidence cannot be taken into consideration. During evidence in examination-in-chief, P.W.1 - Abubekar states that, about a month prior to murder of his father, accused No.3 - Mahesha had cut a 'beetal' tree and had kept the said tree near the house of accused No.2 - Ibrahim and deceased Adam had informed about the



same to the forest authorities and the accused were held in connection with the cutting of the said 'beete' tree. Further, about three years prior to date of death of Adam, there was a quarrel between accused No.1 - Abdul Ajeez and Adam about the Masjid. As far as the said dispute is concerned, accused No.1 - Abdul Ajeez and his people had filed complaint against deceased Adam, and Adam and his people had filed complaint against accused No.1 - Abdul Ajeez and others. No doubt there has been dispute between deceased Adam and accused No.1 - Abdul Ajeez. Further, it is the contention of the learned counsel for the accused that, the house of Appuawamygowda is opposite the house of P.W.4 - Yashodamma, and house of Mohammed is towards west at a distance of about 150 feet from the scene of offence, and house of Shivaramegowda is opposite the house of Mohammed, and house of Venkappa is also near the house of P.W.4 - Yashodamma. It is the contention of the learned counsel for the accused that, though the independent witnesses were available, the prosecution has not examined the said witnesses and therefore an adverse inference has to be drawn. This Court could have appreciated this argument of the learned counsel for the accused, if the



prosecution had not examined any independent witnesses. As already pointed out by me, P.W.3 - Fathima and P.W.5 - Ameenabi are the independent witnesses. The investigating Officer or the prosecution need not examine each and every independent witnesses. Further, though it is elicited in the cross-examination, that the said houses are situated near the scene of offence, there is nothing on record to indicate that the people residing in the said houses were also present at the time of incident. It is further contended by the learned counsel for the accused that, the evidence of P.W.4 - Yashodamma shows that she runs a shop in her house; she has found children and in her absence, her father looks after the said shop. But, it is contended that nobody from the house of P.W.4 - Yashodamma is examined. P.W.4 - Yashodamma, admittedly was not present at the time of incident and according to her, she had gone to the house of P.W.5 - Ameenabi; at that time C.W.3 - Mariyamma came and told about the murder of Adam; immediately she came near the house and at that time, Adam was lying injured near their house within the compound of their house. This witness is treated hostile by the prosecution since she did not support the case of the prosecution. In her evidence, she

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admits that, she has six children and if her children are not attending school, they will be at home and in her absence, her father looks after the said shop. Since the prosecution has failed to examine any of the children of P.W.4 - Yashodamma or her father, it is contended that the Court has to draw an adverse inference against the prosecution. At the cost of repetition it can be stated here that, p.W.4 - Yashodamma is treated hostile by the prosecution. Further, during the course of cross-examination of P.W.2 - Asiyamma, it is elicited that, at the time of incident, house of Yashodamma was locked. This clearly indicates that nobody was present in the house of P.W.4 - Yashodamma at the time of incident. If any person was present in the house of P.W.4 - Yashodamma, and if the said person is not examined, then only adverse inference can be drawn against the prosecution and when nobody was present in the house of P.W. 4- Yashodamma at the time of incident, as can be seen from the evidence of P.W.2 - Asiyamma during the course of cross-examination, no adverse inference can be drawn against the prosecution. There is nothing on record to show and to why P.W.3 - Fathima and P.W.5 - Ameenabi should falsely implicate accused No.1 to 3 in this case. Therefore, even if P.W.1 - Abubekar



and P.W.2 - Asiyamma are the close relatives of deceased Adam and cases were pending between accused No.1 - Abdul Ajeez and his people on the one hand, and deceased Adam and his people on the other, since there is corroboration to the evidence of these witnesses from the independent source, their evidence cannot be disbelieved."

33. We are in total agreement with the above said view taken by the Trial Court, and we are unable to reject the evidence of the eye witnesses - P.W.s 2, 3 & 5. We have ourselves carefully gone through the entire evidence of these 3 eye witnesses with the assistance of the learned counsel for the appellant and we find that shorn of a few embellishments here and there, their testimony has a ring of truth, a colour of consistency and a sense of straightforwardness, as a result of which, their evidence inspires great confidence. They have given a graphic description of what they had seen and observed. In these circumstances, therefore, we do not see any reason to discard the assessment of the Trial Court regarding these three eye witnesses. That apart, the evidence of these three eye witnesses finds corroboration from the medical evidence. Therefore, when the evidence of these three eye witnesses



P.W.s 2, 3 & 5 is found to be natural and corroborated by the medical evidence and the other attending circumstances in the case, the same cannot be discarded. Merely because they did not react in any particular manner after witnessing the occurrence and that further they do not speak to the individual overt acts committed by each of the accused persons, that by itself will not be sufficient to discredit their evidence. So far as P.W.2 is concerned, immediately on seeing such ghastly assault committed on her husband, she went to the Mosque where her son P.W.1 was available, to inform the same to him. It is no doubt true that none of them had rushed to the rescue of the deceased. But then it has to be stated that all the three eye witnesses were women and were unarmed and bare handed whereas the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors like in the present case, where the witnesses are unarmed, but the accused are armed with deadly weapons. In a given case instinct of self preservation can be a dominant instinct. That being the position, their inaction in not coming to the rescue of the deceased cannot be a ground for discarding their evidence.



34. Now coming to the motive contributed by the prosecution to the accused for committing the crime, it has to be stated that proof of motive satisfies the judicial mind about the likelihood of the Authorship, but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient and satisfactory. The Motives of men are often subjective, submerged and unamenable to easy proof that the Courts have to go without clear evidence thereon, if other clinching evidence exist. In the case on hand, the dispute between the parties is admitted. In fact the accused No.1 had lodged a complaint against the deceased and others and the said matter was pending adjudication in this Court at the time of this incident. There was also a dispute between them in respect of certain Mosque matter. Though the accused states that the said dispute between them had been compromised, there is nothing on record to show that the said dispute had been compromised before the incident and that the parties were living amicably. No doubt, it is a sound principle to remember that every criminal act was done with a motive, but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit the crime. When the prosecution has

succeeded in showing the possibility of some ire for the accused towards the deceased, the inability to further put on record, the manner in which such ire would have swelled up in the mind of the accused persons to such a degree as to impel them to commit the crime cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility of the prosecution to unravel the full dimension of the mental disposition of the accused towards the deceased. It cannot be forgotten that, it is generally a difficult area for any prosecution to bring on record what was in the mind of the accused persons. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them, due to the ban imposed by law. However, the present is not a case of complete dearth of motive. There was strong hostility between the accused and the deceased and that could have been a possible motive for the accused to commit the crime. Any rancour burgeoning in the mind of the accused persons can foment wicked thoughts which may even flame up to flash point. It is generally an impossible task for the prosecution to prove what precisely would have impelled the accused persons to kill the deceased and all that the prosecution in a case can point to, is the possible



mental element which could have been the cause of the murder. In this connection, we deem it useful to refer to the observations of the Hon'ble Supreme Court in the case of **State of Himachal Pradesh V/S. Jeet Singh** reported in **AIR 1999 SC 1293** wherein it is held as under;

"33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire from the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In this context we may extract the observations made by a two Judge Bench of this Court (Dr.A.S.Anand, J. - as the learned Chief Justice then was and Thomas. J.) in **Nathuni Yadav V. State of**



Bihar, (1998) 9 SCC 238: (1997 AIR SCW 1158):

"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in R.V.Palmer (Short-hand Report at p.308 CCC MAY 1856) thus:

'But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.'

Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological

phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant." (para 17 of SCC) (para 16 of AIR)\*

35. Therefore, in the light of the above observations and on the facts and circumstances of this case, we are of the view that the materials placed on record would show that there was a motive for the accused to commit the crime.

36. The discovery of incriminating materials pursuant to confessions made by the accused constitutes the third category of evidence. The second category of evidence being the recovery of the blood stained clothes Mos 1 to 6 from the person of the accused persons A1 to A3 after their arrest by the police. Obviously, the confessions are inadmissible, but the discoveries are, provided they are pertinent to the guilt of the accused. So far as the accused No.1 is concerned his statement resulted in the discovery of the chopper vide, panchanama Ex.P5. Likewise, the statements made by the other two accused persons A2 to A3 resulted in the discovery of the other two choppers. The evidence of the Investigation Officer P.W.15 would clearly indicate that the accused persons led the Panchas to a graveyard in Achanji village



and after the Jeep was stopped at a particular place the accused No.1 led them to a spot near a tomb in the graveyard and from inside the bush, he took out the chopper MO.11 and produced the same before the Investigating Officer P.W.15 and the panchas and that the same was seized under the Panchanama Ex.P5. Thereafter, Accused 2 led them to a place near the place where the accused-1 had produced the chopper and from inside the bush, the accused 2 produced the chopper MO12 and the same was seized under a Panchanama Ex.P6. Lastly, Accused 3 led them to a certain place in the graveyard and from inside the bush he produced the chopper MO13 under the Panchanama Ex.P7. The evidence of the Investigating Officer P.W.15 would further disclose that the Shirt MO1 and the Pant MO2 were seized from the person of Accused-1. Likewise, MO4 the pant and MO3 the shirt were seized from the person of Accused 2 and the T-Shirt MO5 and the Pant MO6 were seized from the person of Accused 3. All these material objects MOs 1 to 6 were seized under a Panchanama Ex.P9. His evidence would also reveal that on 24.06.1982 he had sent all these seized articles for their chemical examination to the FSL at Bangalore. It is no doubt true that there has been some delay in sending the articles for the chemical



examination to the FSL at Bangalore. But then, that by itself will not be sufficient to discard the evidence placed on record with regard to the recovery of the material objects at the instance of the accused persons and sending the same to the FSL for chemical examination. The report of the chemical examiner received from the FSL as per Ex.P20 would disclose that MOs 1 to 6 were stained with blood and that further the weapons produced by the accused were also was stained with blood on the blade. The accused had offered no explanation in this regard when they were questioned under Section 313 Cr.P.C. These circumstances bind the accused persons to the crime a little closer. The conclusion that emerges from these recoveries is that the wearing apparels of the accused persons A1 to A3 and the weapons recovered, establish some nexus between the Crime and the appellants. We are aware that by themselves, they are inconclusive, but in conjunction with the other facts they may have efficacy. The said recoveries effected from the persons of the accused persons as well as pursuant to the statements made by these accused persons would substantially corroborate the evidence given by P.W.s 2,3 & 5 regarding the occurrence. We have to point out that these circumstances will become

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relevant when considered in the light of the evidence given by the three eye witnesses P.W.s 2, 3 & 5.

36. Incidentally it is to be noted that while appreciating the evidence of the prosecution witnesses in a criminal trial, the minor discrepancies and trivial matters without effecting the substratum of the prosecution case prompting the Court to reject the evidence in its entirety. If the general tenor of the evidence given by the prosecution witnesses and the Trial Court upon appreciation of such evidence forms opinion about the credibility thereof, in the normal circumstances, the Appellate Court would not be justified to review it once again without justifiable reasons. It is the totality of the situation which has to be taken note of and we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record. In this context, reference may be made to the two decisions of the Hon'ble Supreme Court in the case of **State of U.P. V/S. M.S. Anthony** reported in 1985 SCC (Cri) 105 and **Leela Ram (dead) through Dull Chand V/S. State of Haryana** reported in 2000 SCC(Cri) 222. It is needless to say that difference in some minor detail, which does not otherwise effect the substratum of the prosecution case that may be there, but that by itself would not prompt the Court to reject the evidence on minor



variations and discrepancies. In the case of Leela Ram (dead) through Dull Chand V/s. State of Haryana and another reported in 2000 SCC(Cri) 222 the Hon'ble Supreme Court has observed in para 10 of the judgement as under;

"10. In a very recent decision in *Rammi V/S. State of M.P.*, this Court observed: (SCC p.656, para 24)

24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

This Court further observed: (SCC pp.656-57, paras 25-27)



"25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

'155. Impeaching credit of witness. - The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him -

(1) - (2)

(2) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;'

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be



'contradicted' would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh V. State of UP)"

37. Under the circumstances, therefore, we find no infirmity in the impugned judgment and order of conviction passed by the Trial Court so as to call for interference in the appeal by this Court. Therefore, having given our thoughtful



considerations to the entire matter in issue, we find no merit in this appeal filed by the appellants. Consequently, the impugned Judgment and order of conviction and sentence passed by the Trial Court stands confirmed. The appeal accordingly, stands dismissed.

Sd/-  
Judge

Sd/-  
Judge

Vgc/sps